Supreme Court, U.S.
FILED

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NO. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Leon J. Brobst

Petitioner

v.

Blair County Department of

Cost and Fines

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Leon J. Brobst pro se
RD1 Box 213F
Hesston, PA. 16647
814 658 3117

25 pp

QUESTIONS PRESENTED

1. Did the lower court error when it failed to address Petitioner's appeal based upon 28 U.S.C. §§ 1602-1607 of the Foreign Sovereign Immunities Act?

2. Did the lower court fail to distinguished between the commonwealth acting against Petitioner in its jure gestionis or jure imperii capacity?

3. Did the lower court deny 14th Amendment Due Process when it failed to apply the minimum contacts standard to its decision?

LIST OF THE PARTIES

All parties appear in the caption of the case in the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

Supreme court order, filed March 17, 1997, appears in Appendix at A-1, infra.

Superior court's order, filed March 21, 1996, appears in Appendix A-2, infra.

Court of Common Pleas of Blair County order, filed, July 19, 1995, appears in Appendix A-4, infra.

JURISDICTION

An extension of time to file the petition for a writ of certiorari was granted to and including August 14, 1997 on June 6, 1997 in Application A-887. in Appendix A-5, infra. This Court's jurisdiction is invoked under Title 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I Section 10 to the Constitution of United States of America provides in relevant part:

> No State shall enter into any ... Law impairing the Obligation of Contracts,

2. Amendment 14 to the Constitution of United States of America provides in relevant part:

> ... nor shall any State deprive any person of life, liberty or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. 1602-1607 FOREIGN SOVEREIGN IMMUNITIES ACT

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be livied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§1603 Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) is an organ of a foreign state or political subdivision thereof, or a majority of whose share or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604 Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605 General exceptions to the jurisdictional immunity of a foreign state.

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon a act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

1606 Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner an to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages;

1607 Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—
(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state.

STATEMENT OF THE CASE

The issue involves the imposition of fines and cost after a criminal prosecution and conviction that resulted from Petitioner displaying on his motor vehicle, his own private registration plate that was not issued by the Commonwealth of Pennsylvania. Petitioner maintained and pleaded in the criminal proceedings to no avail, that the trial court lacked personal jurisdiction under the 14th Amendment Due Process Clause, and its minimum contacts standard. After filing a timely series of Post Verdict Motions which were denied, Petitioner filed a timely notice of appeal with the Superior Court of Pennsylvania. Shortly thereafter, Petitioner discovered the Foreign Sovereign Immunities Act (FSIA) at 28 U.S.C. 1602-1611. Petitioner concluded that he was making a mistake appealing the commonwealth's criminal case to the superior court for relief, thus dismissing the appeal.

Petitioner then proceeded to file an action under FSIA in the United States district court. Said complaint being dismissed without the court addressing the issues presented under FSIA.

Petitioner filed a timely appeal of the district court's order to the Third Circuit Court of Appeals. The court

dismissed the action stating that Petitioner failed to exhaust his state remedies.

Petitioner filed a timely petition with the United States Supreme Court case number 94-665. Said petition being denied. Appellant filed a timely petition for rehearing. Said petition being denied.

Petitioner proceeded to pay the cost and fines to the Blair County Dept. of Cost and Fines "under protest".

Petitioner then filed a complaint pursuant to the FSIA against the Blair County Department of Cost and Fines for the refund of the cost and fines and to have the criminal judgment entered in the trial court declared null and void.

Petitioner failed to appear at the first scheduled hearing in the Blair County Court of Common Pleas, concerning Petitioners FSIA Complaint, because of a misreading of the "notice of hearing" received from the court administrator. Upon discovery of the mistake, Petitioner filed a motion for reconsideration. Hearing was held, and the court concluded (A-4)

> And now, this 19th day of July, 1995, upon consideration of Plaintiff's Motion for Reconsideration of Hearing and argument into the merits of Plaintiff's complaint, it is the Order of the court that said complaint be and it is hereby dismissed with prejudice.

Petitioner filed a timely appeal to the superior court bringing up the terms of the FSIA. The court concluded that

> This is an appeal from the Order entered July 19, 1995 in the Court of Common Pleas of Blair County, dismissing Leon Brobst's Civil Complaint. The substance of his Complaint is not before this court.

> Presently, although the Order appealed from is one which dismisses his Complaint, Brobst does not attempt to argue that the dismissal was improper. Rather, Brobst has briefed the issue of why the costs and fines imposed as a result of his conviction should be returned to him. Further obscuring our review is the fact that the arguments presented by appellant in this regard are completely unintelligible. What can be gleaned from a review of appellant's brief is that appellant appears to conclude, without factual or legal support, that he is a foreign sovereign who is not subject to the jurisdiction, and consequently, the traffic laws, of the Commonwealth of Pennsylvania. Accordingly, appellant would appear to conclude, the imposition of fines and costs was improper. In short, appellant's arguments bear no relationship to the Order appealed from. Appellee has not filed a responsive brief on this appeal.
>
> We have examined the record and the appellant's brief and conclude that the court has correctly addressed the relevant issue, which is the dismissal of Brobst's Complaint, in its opinion. Accordingly, we adopt it as our own purposes of this appeal.[footnotes omitted]
>
> (A-2, A-3)

Petitioner filed a timely "Petition for Allowance of Appeal" to the Pennsylvania Supreme Court. Petition was denied (A- 1).

REASONS FOR GRANTING WRIT

THE LOWER COURT HAS IGNORED A FEDERAL QUESTION IN TOTAL DISREGARD OF A GOVERNING ACT OF CONGRESS, IN CONFLICT WITH AN APPLICABLE DECISION OF THIS COURT

Contrary to the holding below, the FSIA is an all-encompassing statute which sets forth both the substantive and procedural standards that govern *all* suits that may be brought against foreign states in state and federal courts in

the United States. Although the statute provides that judicial, rather than executive, authorities should determine claims of foreign states to sovereign immunity from suit, it mandates that they must do so *"in conformity with the principles set forth in this chapter"* (§ 1602, emphasis added). The principles prescribed by Congress in the FSIA embody the "restrictive" theory of sovereign immunity—*Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 487 (1983)—under which foreign states are subject to suit only "insofar as their commercial activities are concerned," *i.e.*, for activities *jure gestionis* (§ 1602). With one exception noted below, non-commercial, governmental or sovereign activities of foreign states—activities *jure imperii*—cannot be made subject of suit in the court of the United States or a State as a matter of established international law which Congress expressly incorporated into the FSIA.

The FSIA announces detailed standards for determining when immunity is to be accorded. The fundamental principle on which the statute is structured is that foreign states are "immune from the jurisdiction of the courts of the United States and of the *States*" unless an exception is found within the statute or applicable international agreements (§ 1604, emphasis added). Statutory exceptions from this general grant of immunity exist when immunity has been waived (§ 1605(a)(1)), when the claim arises from specified commercial activities of the sovereign state (§ 1605(a)(2)), when rights in property taken in violation of international law are at issue (§ 1605(a)(3)), when rights in specified

property situated in the United States are involved (§ 1605(a)(4)), and when claims based on tortious injuries to persons or property occurring within the United States are in question (§ 1605(a)(5)).

In addition, the FSIA sets forth detailed procedural rules for suits against foreign states, including special rules governing service of process (§ 1608), counterclaims (§ 1607).

Congress provided in § 1602 of the FSIA that "[c]laims of foreign states to immunity should *henceforth* be decided by [United States courts] in conformity with the principles set forth in this chapter," and very likely it thought that should be sufficient, § 1602 (emphasis in original); see also HR Rep, at 12; S Rep, at 11 (FSIA "intended to preempt any other State and Federal law (excluding applicable international agreements) for according immunity to foreign sovereigns"). *Argentine Republic v. Amerada Hess* 488 U.S. 437 438. This balance, completeness and structural integrity of the FSIA conclusively refutes the lower court invoking Pennsylvania's motor vehicle laws (A-3).

The lower court's view (A-3), that appellant has no factual or legal support that appellant is sovereign not subject to the commonwealth's motor vehicle laws, then conclude, "that the trial court has correctly addressed the relevant issue" is a total miscarriage of justice. The lower courts clearly reached their conclusion by ruling outside the statutory subject matter of Petitioner's complaint thereby ignoring the terms of the FSIA. The restrictive theory of immunity as it developed in customary international law and

as it was adopted by Congress in the FSIA, distinguishes between "governmental or sovereign" activities engaged in by the states *jure (imperii)* and their private law activities—activities of the kind that may also be carried on by private persons (*jure gestionis*). *Restatement of Foreign Relations Law of the United States (Revised)* (Tent. Draft No. 2, March 1981) § 451 May 1986)("*Revised Restatment*"). It is the essence of the restrictive theory to "restrict" or limit the jurisdictional immunity of foreign states to acts *jure imperii* and to deny immunity for acts *jure jestionis*.

The lower court's view is also plainly refuted by the explicit provision of § 1604 which provides in language admitting of no ambiguity that *a foreign state is immune from jurisdiction of federal and state courts*, subject only to the set of exceptions specified in §§ 1605 and 1607, and express jurisdictional provisions in treaties or international agreements to which the United States is a party which may provide a different rule. See also H.R. Rep.No. 94-1407 at 17 [1975] U.S. Code Cong. & Admin. News at 6616: "Section 1604 would be the only basis under which a foreign state could claim immunity from the jurisdiction of any federal or state court in the United States" (emphasis added).

In *Verlinden B.V. v. Central Bank of Nigeria*, supra, this Court painstakingly reviewed the provisions of the FSIA and its legislative history and concluded that the statute "contains a comprehensive set of legal standards governing claims of immunity in *every civil action against a foreign*

state ..." (461 U.S. at 488 emphasis added).[1] Elsewhere in *Verlinden*, the Court emphasized that the FSIA was "clearly intended to govern *all actions* against foreign sovereigns (461 U.S. at 491 n. 16 emphasis added). Further, the Court, referring to H.R. 94-1487 stated in *Verlinden* at 490, "the desire to insure *our citizens* ... access to the courts." ... "not by restricting the class of potential plaintiffs, but rather by enacting substantive provisions requiring some form of substantial contact with the United States." [Emphasis in original]. See also H.R. at 6605.

The lower court erred in disregarding the express provisions of § 1604 of the FSIA, the statute's legislative history and this court's binding precedent in *Verlinden*. Every action against a foreign sovereign necessarily involves application of a body of substantive federal law at the very outset, and accordingly arises under federal law, within the meaning of Art III. *Verlinden B.V. v. Central Bank of Nigeria* supra, 461 U.S. 493, 494.

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[1] Every Circuit Court of Appeals that has addressed the issue agrees the FSIA provides the exclusive basis for federal jurisdiction in civil actions against foreign states and their agencies. See *Englewood v Socialist People's Libyan Arab Jamahiriya* , 773 F2d 31, 35 (3rd Cir NJ 1985). *Williams v. Shipping Corp. of India* 653 F2d 875, 881 (4th Cir. 1981) cert den. 455 U.S. 982 (1982); *Goar v. Compania Peruana de Vapores*, 688 F2d 417, 421 (5th Cir. 1982); *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 372 (7th Cir 1985), *Yugoexport, Inc. v. Thai Airways Intern. Ltd.*, 749 F.2d 1373, 1375 (9th Cir 1984), cert denied, 471 U.S. 1101 (1985); *Jackson v. People's Republic of China*, 794 F.2d 1490, 1493 (11 Cir. 1986); MacArthur *Area Citizens Association v. Republic of Peru* 809 F.2d 918, 919 (D.C. Cir. 1987).

Its holding that Pennsylvania law provides a cause of action and subject matter jurisdiction where the FSIA expressly forbids it would make a nullity of the FSIA, and merits review by this Court.

THE LOWER COURT'S DECISION IS A VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE, ARTICLE I SECTION 10 CLAUSE 7, AND REPEATED DECISIONS OF THIS COURT

The lower court's decision that Petitioner is not sovereign, therefore, subject to Pennsylvania's motor vehicle laws, is to reach the untenable conclusion that the petitioner has the requisite substantial contacts with Pennsylvania's jure gestionis forum. In order to satisfy the minimum contacts requirement, the court must be able to point to "some act by which the [petitioner] purposefully avails itself of the privilege to conducting activities within the forum state, thus invoking the benefits and protections of its law." *Burger King Corp. v. Rudzwicz,* 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, (1985). The lower court not only ruled outside the statutory subject matter of petitioner's complaint, but failed to point to a privilege that petitioner availed himself too that would place petitioner within Pennsylvania's jure gestionis forum. This Court also ruled that the same test of minimum contacts and fair play and substantial justice that governs in personam jurisdiction also should be applied to in rem and quasi in rem actions. *Shaffer v Heitner* 97 S.Ct. at 2582, 433 US at 207. Clearly, the

lower court failed to apply 14th Amendment Due Process.[2] It is established international law that action by a state in prescribing or enforcing a rule that it does not have jurisdiction to prescribe or to enforce is a violation of international law, giving rise to the international responsibility of the state. Restatement (Second), § 8.

Petitioner's freedom to choose whether to have a privilege from the state or reject the idea of such a privilege without interference from the state lies not only under Article I Section 10 clause 7, but also under the law merchant. "Our rulings today vindicate more than Congressional intent. They affirm the right of all participants in the marketplace of the world to be treated as equals, and to ascribe to principles of trade which found their birth in the law merchant, centuries ago." *Texas Trading v. Republic of Nigeria*, 647 F.2d 320 (1981) cert denied 454 U.S. 1148, 102 S.Ct. 1012 (1982).

Having unilaterally determined that Petitioner is subject to Respondent's local law with the criminal prosecution and conviction of Petitioner in violation of 14th Amendment Due Process, Respondent would have every "reason to expect to be haled before a ... court" in Petitioner's forum. *Shaffer v. Heitner,* supra, 433 U.S. at 216, 97 S.Ct. at 2586. Having instituted litigation on their own, and having been notified of its likelihood by Petitioner, Respondent cannot now assert

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[2] In enacting the FSIA, Congress expressly incorporated the Due Process principles enunicated in International Shoe, H.R. Rep. 94—1497 [1975] U.S. Code Cong. & Admin. News at 6612.

sovereign immunity unless qualified under the terms of § 1604. Moreover, the very function of the due process clause is to give "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. at 297, 100 S.Ct. at 567. In light of Respondent's intentional activities, litigation was clearly foreseeable under the statutory subject matter of the FSIA, outside the realm of local law.

In sum, there is a total absence of the application of the terms of the FSIA and the failure to point to a Constitutionally mandated contact by Petitioner with Pennsylvania's jure gestionis forum, thus rendering the lower court's decision patently invalid as a matter of substantive federal law, and the binding precedents of this Court.

The lower court has so far departed from the accepted and usual course of judicial proceedings to call for the exercise of this Court's supervisory power.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: August 1, 1997

Respectfully submitted,

Leon J. Bobst

Leon J. Brobst pro se
RD1 Box 213F
Hesston, PA 16647
814 658 3117

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

LEON J. BROBST

0224 Western District
Allocator Docket 1996

v.

Petition for Allowence of
Appeal from the Superior Court

BLAIR COUNTY DEPT.
OF COST AND FINES

ORDER

PER CURIM:

AND NOW, this 17th day of March, 1997, the Petition for Allowance of Appeal is hereby **denied.**

IN THE SUPERIOR COURT OF PENNSYLVANIA

LEON J. BROBST

v.

BLAIR COUNTY DEPT. OF COST AND FINES

No. 1553 Pittsburgh 1995

Appeal from the Order Entered July 19, 1995,
in the Court of Common Pleas of Blair County,
Civil Division, No. 95-CP-569

BEFORE: TAMILIA, FORD ELLIOT, AND EAKIN, JJ.

MEMORANDUM:

FILED: MARCH 21, 1996

This is an appeal from the Order entered July 19, 1995 in the Court of Common Pleas of Blair County, dismissing Leon Brobst's Civil Complaint. The substance of his Complaint is not before this court.[1]

Presently, although the Order appealed from is one which dismisses his Complaint, Brobst does not attempt to argue that the dismissal was improper. Rather, Brobst has briefed the issue of why the costs and fines imposed as a

[1] Brobst's Complaint is apparently an attempt by him to recover costs and fines he was required to pay to Blair County in connection with his arrest and conviction for the summary traffic violation of driving with altered, forged, or counterfeit documents (forged license plates). This violation occurred in 1993. The Complaint was filed in 1995.

result of his conviction should be returned to him. Further obscuring our review is the fact that the arguments presented by appellant in this regard are completely unintelligible. What can be gleaned from a review of appellant's brief is that appellant appears to conclude, without factual or legal support, that he is a foreign sovereign who is not subject to the jurisdiction, and consequently, the traffic laws, of the Commonwealth of Pennsylvania. Accordingly, appellant would appear to conclude, the imposition of fines and costs was improper.[2] In short, appellant's arguments bear no relationship to the Order appealed from. Appellee has not filed a responsive brief on this appeal.

We have examined the record and the appellant's brief and conclude that the court has correctly addressed the relevant issue, which is the dismissal of Brobst's Complaint, in its opinion. Accordingly, we adopt it as our own purposes of this appeal.

The Order of the Court of Common Pleas of Blair County is affirmed. Jurisdiction is relinquished.

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[2] Appellant also made these or similar arguments during a hearing on his motion for reconsideration of the Order dismissing his Complaint on July 19, 1995. At that time, the trial court advised Mr. Brobst that if he came back to the court with anything in the nature of the arguments he made at the hearing on reconsideration, he would be subjecting himself to possible civil and criminal penalties. See Docket Entry number 10, transcript of Hearing on Motion for Reconsideration, July 19, 1995, at 7-8.

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA

LEON J. BROBST
Plaintiff

NO. 569 CP of 1995

vs.

BLAIR COUNTY DEPT.
OF COSTS AND FINES
Defendant

SPECIALLY PRESIDING:
THE HONORABLE JOHN K. REILLY

FOR PLAINTIFF:
APPEARING PRO SE

FOR DEFENDANT:
BENJAMIN H. CLAAR, JR., ESQ.

****

ORDER

****

AND NOW, this 19th day of July, 1995, upon consideration of Plaintiff's Motion for Reconsideration of Hearing and argument into the merits of Plaintiff's complaint, it is the ORDER of the court that said complaint be and it is hereby dismissed with prejudice.

BY THE COURT:

/S/ _____
J
Specially Presiding

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

June 6, 1997

Mr. Leon J. Brobst
RD1 Box 213F
Hesston, PA 16647

Re: Leon J. Brobst
v. Blair County Department of Costs
and Fines
Application No. A-887

Dear Mr. Brobst:

The application for an extension of time within which to file a petition for writ of certiorari in the above-entitled case has been presented to Justice Souter, who on June 6, 1997, extended the time to and including August 14, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

By /s/
Melissa A. Blalock
Assistant Clerk

NOTIFICATION LIST

Mr. Leon J. Brobst
RD1 Box 213F
Hesston, PA 16647

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